

KAMING & KAMING

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October 20, 2009

VIA ECF and FEDERAL EXPRESS

Mr. Robert C. Heinemann
Clerk of the Court
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: **REQUEST FOR CONSOLIDATION OF CASES**
Local #46 Metallic Lathers Union and Reinforcing Iron Workers
Welfare Trust, etc., et al. v. Aggregates Plus Ltd. And Liberty Mutual
Insurance Company – CV-09-2615 (BMC)
and
Cement and Concrete Workers District Council Welfare Fund, etc., et al.
v. Aggregates Plus Ltd., Richard Nocella and Liberty Mutual Insurance
Company – CV-09-2616 (CBA)

Dear Mr. Heinemann:

We write on behalf of the Metal Lathers Local #46 Plaintiffs in action CV-09-2615 (BMC) and Cement and Concrete District Council Plaintiffs in action CV-09-2616 (CBA) and the attorneys Alizio & Galfunt, LLP representing Defendant, Aggregates Plus Ltd. and Duane Morris LLP representing Defendant Liberty Mutual Insurance Company. All attorneys have agreed to have these two cases consolidated and heard before a Magistrate Judge in accordance with a conference held before Judge Cogan. The Magistrate subsequently assigned by the Clerk to hear these matters is Magistrate Judge Azrack. See attached Orders and letter.

Both matters involved the same corporate and principal Defendants and although the Plaintiffs differ in the two actions the relief sought in each action is the same and the factual issues relate to the same body of evidence and fact. The attorneys in each action are the same. The matters are ERISA contribution actions, one brought by the Cement and Concrete Workers as Plaintiffs and the other brought by the Metal Lathers as Plaintiffs. The Corporate Defendants in both actions are the same with the Defendant Aggregate Plus Ltd. according to the complaint owing monies for ERISA benefits and contributions to the Plaintiffs. The individual Defendant in the Cement and Concrete action is the corporate guaranty of any monies found to be owed. The Defendant insurance company is the provider of a materials and labor payment bond on one particular job, PS 230/IS 229, monies from which job the complaint claimed would be

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Mr. Robert C. Heinemann
October 20, 2009
Page 2

owing from Liberty if the Defendant Aggregate fails to make payments from that job. The Defendant Aggregate and the Defendant Liberty are in mutual discussion to resolve this issue.

We believe this matter will be resolved by an auditing review of the jurisdictional work performed. We believe that the consolidation of these cases would result in a substantial saving of judicial resources which is likely to result from assigning both cases to the same Magistrate Judge. Before the Clerk of the Court designated Magistrate Azrack to handle this matter all parties had agreed to the consolidation and hearing by a Magistrate Judge, although that Magistrate Judge had yet to be assigned. We believe assigning these matters to Judge Azrack is in keeping with the blind assignment resulting from Judge Cogan's request for an assignment from the District Court Clerk.

We request these matters be consolidated. Thank you for your attention to this matter.

Very truly yours,



JOSEPH S. KAMING

JSK:jm
ENC.

cc: Neil B. Galfunt, Esq., Alizio & Galfunt, LLP, Attorneys for
Defendant Aggregates Plus, Ltd.
John S. Wojak, Jr., Esq., Duane Morris LLP, Attorneys for Defendant
Liberty Mutual Insurance Company

Case 1:09-cv-02615-JMA Document 11
Case 1:09-cv-02615-BMC Document 2Filed 09/11/09 Page 1 of 1
Filed 06/19/09 Page 1 of 8**FILED**
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ SEP 11 2009 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORKLOCAL #46 METALLIC LETTERS
Union etc. et

Plaintiff,

-against-

Aggregates Plus Ltd &
Liberty Mutual
INSURANCE

Defendant.

BROOKLYN OFFICE

**CONSENT TO EXERCISE
JURISDICTION BY A UNITED
STATES MAGISTRATE JUDGE**

Case Number:

(BMC) CV. 09-2615

**NOTICE OF AVAILABILITY OF A UNITED STATES
MAGISTRATE JUDGE TO EXERCISE JURISDICTION**

Exercise of this jurisdiction by a magistrate judge is permitted only if all parties voluntarily consent. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned. An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States Court of Appeals for the Second Circuit in the same manner as an appeal from any other judgment of this district court.

CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with provisions of 28 U.S.C. §636(c) and Fed.R.Civ.P. 73, the parties in this case consent to have a United States Magistrate Judge conduct any and all proceedings in this case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Dated:

Name of Firm

By:

Joseph S. Kamias

Signature

Attorneys for plaintiff

[Address/Telephone]

Name of Firm

By:

Signature

Attorneys for

[Address/Telephone]

Aggregates Plus, Ltd.

1551 Franklin Ave
Mineola, NY 11501
516-203-3950

SO ORDERED: 9/10/09

/s/(BMC)

U.S.D.J.

Name of Firm

By:

Attorneys for Liberty Mutual Insurance

John S. Wojcik Jr.
Duane Morris, LLP1540 Broadway
New York 10036

212-692-1001

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Attorneys At Law
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New York, NY 10065

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September 29, 2009

VIA ECF

Honorable Joan M. Azrack
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Local #46 Metallic Lathers Union, et al. v.
Aggregates Plus Ltd. and Liberty Mutual Insurance Company
CV-09-2615 (BMC)
REQUEST FOR CONSOLIDATION OF CASES and
REQUEST FOR ADJOURNMENT

Dear Judge Azrack:

We represent the Plaintiffs, Local #46 Metallic Lathers Union, et al. in the above captioned action. This matter was before Judge Brian M. Cogan on September 10, 2009 and was assigned to Your Honor. An initial conference is scheduled for October 8, 2009 at 12:30 p.m. I have a previous commitment of being out of town on October 8, 2009, and request that this initial conference scheduled for October 8, 2009 be adjourned at least two weeks. I have contacted Defendants' counsel with regard to this adjournment and they have no objections if the Court can accommodate this request.

For purposes of discovery, counsel jointly request that this case be consolidated, at least for discovery purposes, with the following case since the parties and issues are the same or similar. *Cement and Concrete Workers, etc., et al. v. Aggregates Plus Ltd., et al.*, CV-09-2616 (CBA) (LB).

For the convenience of the Court, we have attached a current copy of the Cement and Concrete Workers docket sheet to this letter.

Honorable Joan M. Azrack
September 29, 2009
Page 2

Thank you for your attention to this request.

Respectfully,

/s/
JOSEPH S. KAMING

JSK:jm
ENC.

cc.: Honorable Carol B. Amon
Honorable Lois Bloom
Neil B. Galfunt, Esq., Attorney for Defendant Aggregates Plus, Ltd.
John S. Wojak, Jr., Attorney for Liberty Mutual Insurance Company

JKAMING

From: <ecf_bounces@nyed.uscourts.gov>
To: <nobody@nyed.uscourts.gov>
Sent: Tuesday, September 29, 2009 5:30 PM
Subject: Activity in Case 1:09-cv-02615-JMA Local #46 Metallic Lathers Union and Reinforcing Iron Workers Welfare Trust, Annuity Fund, Pension Fund, Apprenticeship Fund, Vacation Fund, Scholarship Fund and Other Funds et al v. Aggregates Plus Ltd. et al Order on Motion to Adjourn Conference

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 9/29/2009 at 5:30 PM EDT and filed on 9/29/2009

Case Name: Local #46 Metallic Lathers Union and Reinforcing Iron Workers Welfare Trust, Annuity Fund, Pension Fund, Apprenticeship Fund, Vacation Fund, Scholarship Fund and Other Funds et al v. Aggregates Plus Ltd. et al
Case Number: 1:09-cv-02615-JMA
Filer:
Document Number: No document attached

Docket Text:

ORDER granting in part and denying in part [12] Motion to Adjourn Conference and Consolidate Cases: plaintiffs' motion to adjourn is granted and the conference before Judge Azrack scheduled for 10/8/09 is hereby adjourned to 10/22/09 at 2:00 PM; plaintiffs' application to consolidate this matter with Cement and Concrete Workers District Council Funds et. al. v. Aggregates Plus Ltd. et. al., 09-cv-2516 (CBA)(LB) is denied without prejudice to renewal in accordance with Local Civil Rule 50.3.1(d), which directs that such an application be made to the Clerk of the Court. Ordered by Magistrate Judge Joan M. Azrack on 9/29/2009. (Bhatt, Tina)

1:09-cv-02615-JMA Notice has been electronically mailed to:

Joseph S. Kaming jskaming@nyc.rr.com

Brian J. Markowitz bjmarkowitz@duanemorris.com

Neil B. Galfunt neil@pjalizio.com

1:09-cv-02615-JMA Notice will not be electronically mailed to:

10/20/2009